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Before The
Federal Communications Commission
Richmond, Virginia

Testimony
Of
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Federal Communications Commission
Office of the Secretary

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Thank you for conducting today's hearing in Richmond and for allowing me to appear. I serve as Executive Vice President of Young Broadcasting, Inc., which owns and operates eleven television stations in various markets, including WRIC-TV, an ABC affiliate in Richmond.

1 respectfully urge the Commission not to modify or repeal the 35% national television station ownership cap. The 35% cap is essential to "localism" — the bedrock principle on which the Congressionally-mandated broadcast system is based. My remarks are largely directed to that issue.

The current cap, coupled with the right-to-reject rule and other network rules, enables local telcvision stations to make independent programming decisions based on the unique and special needs of each local community, rather than on the national and international program distribution interests of the national television networks.

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The principle of localism is uniquely American. It has roots in our federalist system of government. which guarantees to the states the exclusive power to attend to the everyday needs of local citizens. **As** Virginia's favorite son, Thomas Jefferson, warned his friend Gideon Granger in 1800:

> Our country is too large to have all its affairs directed by a single government. Public servants at such as distance, and from under the eye of their constituents, must, from the circumstance of distance, be unable to administer and overlook all the details necessary for the good government of the citizens.

For the very same reason, Congress rejected the notion of a highly centralized system of terrestrial broadcasting in which four or five national companies would dictate the programming of the nation's local television stations. Unlike the governments of Europe, Congress opted for a system that would assure—to the fullest extent possible—that America's television stations would be responsive to the special needs and interests of the *local* communities they are licensed to serve.

It is as self-evident today as when Congress created the current system of broadcasting that it is not in the national interest to have all of the nation's television broadcast programming dictated each hour of the day, seven days a week, 52 weeks a year, and year-after-year by a handful of program and station owners

It is instructive to look at who is asking you to modify or repeal the national ownership cap. The four major national broadcast networks—multi-national, vertically integrated media companies—are the principle advocates for modification or repeal With few exceptions, the nation's local television stations, their trade associations, consumer and public interest groups, public service organizations, leading members of Congress, and local television viewers oppose repeal or modification. Our good friends at the networks do not want to have to debate and negotiate with local stations in local communities for clearance of their network national (and international) programming. They would prefer, simply, to buy up all of the nation's stations and cut off the program clearance debate.

The vertically-integrated national networks, in short, have every financial incentive to *nationalize* the existing system of *local* broadcasting which, in turn, will enable them to maximize their profits, both in the network run and on the collateral and after-market run of their network programming. *Nationalization* of the terrestrial broadcast industry will, indeed, be the consequence of an increase of the 35% cap. I urge you not to let it happen.

In conversations over the last several months, some of you have fairly asked: How would viewers know the difference if the cap were raised? Viewers will know the difference because network-owned stations have dual missions, and they **are** frequently in conflict: Network-owned stations must serve the interests of their parent network's national and international program interests in addition to the interests of their station's local viewers.

A non-network-owned station, in contrast, has a single goal: To serve only the interests of its local viewers. Serving the interest of *local* viewers, of course, is the essence of localism. Here's how it works in practice:

Localism has meant that the citizens of Springfield, Missouri, were spared an episode of NBC's *Fear Factor* when the local station concluded the program would be offensive to local viewers. No NBC-owned station rejected, to my knowledge, a single episode of *Fear Factor*.

Localism has meant that viewers in North Carolina, Virginia, South Carolina, South Dakota and other states have been able to watch Billy Graham crusades on their local television stations. That, of course, would not have been possible had those stations been owned by a national network.

Localism has meant a **Fox** affiliate in Raleigh, North Carolina, was able to reject Fox's *Temptation Island* because it refused "[to] support a program that could potentially break up the parents of a young child." To my knowledge, none of the Fox-owned stations rejected *Temptation Island.*

Localism has meant that some CBS affiliates were able to reject the *Victoria's Secret* fashion show because they believed it to be offensive to the values of their local viewers. Collectively, other non-CBS-owned stations were able to persuade CBS to delay the start of the program to a time period in which children would be less likely to be viewing. Similarly, NBC affiliates were able to persuade NBC to allow them to carry a Presidential debate rather than an NBC major league baseball play-off game. None of that, of course, would have occurred if CBS or NBC had owned its affiliates.

And, localism has meant that a Texas affiliate was able to reject early versions of ABC's *NYPD Blue* out of concern that the language and content of the program far exceeded acceptable standards for broadcast in the station's service area. Not a single ABC-owned station rejected *NYPD Blue*.

For twenty years, our company's Louisiana station has aired a live recitation of the Rosary early each morning. When we wanted to expand our early local news and move the start time of the Rosary prograni from 5:00 a.m. to 4:30 a.m., our network vehemently objected because our local Rosary program would then encroach on the network's early national news. Had our station been owned by a network, our local Rosary program would not he on the air.

Local interests, obviously, differ dramatically across different communities; those interests reflect the diversity of America. In his attempt to divine the cultural preferences of Franklin County, Pennsylvania, author David Brooks found that "[i]n this place people don't complain that Woody Allen isn't as funny as he used to be, because they ***never*** thought he was funny."

As the Commission, your responsibility, plainly, is not to pass judgment on the humor of Woody Allen, the sanctity of Billy Graham, or our Rosary program, the merits of high school sports and community events, or the questionable content of various network programs. Your statutory responsibility, simply put, is to assure that the nation's system of local broadcast television is preserved so that these and other program decisions can be made *solely* on the basis of the needs and interests of local viewers. In short, localism is not a feel-good public relations campaign waged by broadcasters; it is a legal and public policy obligation of the Commission and its broadcast licensees.

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The pressure — financial and otherwise — the networks place on their non-owned affiliates to carry national network programming, instead of local programming, is never-ending. Fox. for example, insisted that its affiliates carry the sci-fi program, ***Dark Angel,*** instead of the 2000 Presidential debate. Less known, however, was a threat by CBS to pull the Super Bowl rights from a Dayton, Ohio affiliate who wanted to air a local Dayton University basketball game instead of a national NFL game between the

Jacksonville Jaguars and New York Giants, two teams in cities located a combined 1,460 miles from Dayton.

Affiliates around the country routinely schedule time to air both national and local charity telethons — from the larger telethons to benefit the Muscular Dystrophy Association or the Children's Miracle Network to the smaller, locally-produced telethons to benefit literacy in Kansas City or underprivileged children in El Paso. Both Jerry Lewis and Ken Sieve of the Muscular Dystrophy Association have publicly proclaimed that raising the 35% cap will be "catastrophic" to the telethon. In his letter to Chairman Powell, Mr. Lewis stated, quite bluntly, that "[a]s it is, virtually no network owned and operated local stations are permitted to carry the Telethon" and that "[k]eeping the cap at 35% could mean the difference between our Telethon continuing to do its lifesaving job or fading into history as network-owned and other top stations drop the show at the direction of network executives."

It is equally troubling that the networks have begun to insert clauses in their affiliation contracts that restrict the rights guaranteed to affiliates under the FCC's "right to reject" and "option time" rules. As you are aware, affiliates have asked the Commission for the past two years to look at specific network affiliation contract provisions to determine if those contracts impair the ability of local stations to serve the program interests of local viewers. We anxiously await your ruling.

I do not suggest that local stations owned and operated by the networks do not provide excellent programming, including local news and public affairs programming. They do. But it is neither the quantity nor the quality of local news programming that establishes a station's commitment to localism and responsiveness to its local viewers.

The true test of a station's commitment to localism is its willingness to serve local viewer interests—even when those interests are in conflict with other program interests of the owners. The *35%* cap advances that interest, and I respectfully urge you not to modify or repeal it.

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The traditional system of network-affiliate program distribution has produced the most competitive and diverse program distribution ever devised. Our broadcast system is the envy of the world. But an increase in the national cap will shift the "balance of power" in the program market to the networks. It is self-evident that an increase in the *35%* cap will reduce the number of stations on which independent program producers have an opportunity to broadcast programming—this is of particular concern to our company since three of the four major broadcast networks are now owned by studios and we and other local stations are becoming more and more dependent on programming from network-oriented studios. Not only do the networks program 70%-80% of our network schedule, they now own and control up to 100% of the syndicated programs on some of our company's stations.

The greater the number of non-network owned stations, the greater the opportunity for new networks to emerge and compete for affiliates and for affiliates to compete for networks. Had the *35%* cap not been in place a few years ago, it is unlikely the Fox Television Network could have ever been created.

At the end of the day, the network argument for increasing or repealing the cap is purely financial. They claim they can no longer compete unless they acquire ownership of their affiliates. The rhetoric has a hollow—and familiar—ring. The networks have made the argument for years—they made it to the Commission in support of an increase in the cap to 25%, and in 1996 they made it to Congress in support of an increase in the cap to 35%. They made it to the Commission in support of an increase in the cap to 25%. They made to Congress in 1996 in support of an increase in the cap to 35%. If the networks owned every station in America, we would hear the same old argument. Needless to say, local stations who rely on the networks for the bulk of their national programming do not share the networks' "doomsday" view of the networks' future—we believe they can compete and will be able to do so for the foreseeable future—if we did not, we—as their business partners—would be very concerned.

Remember, also: that the networks made a similar "financial distress" argument back in the 1980s when they claimed that they would go broke unless they were allowed to produce and syndicate their own television shows. What happened? It was independent producers who went broke as the networks produced more and more of their own new shows and squeezed the independent producers out of the market.

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Networks presently own 108 television stations today. That is more than twice the number of stations (49) that they owned in 1996 when Congress raised the current cap. And when assessing the merits of the rule, it is important to keep in mind precisely the media interests the networks can now own under the rule. They can own:

- Terrestrial television stations that reach 35% of the nation's television households.
- All the radio stations they can afford–limited only by the local radio/television cross-ownership rules.
- **All** the radio networks they can afford.

- **All** the cable television systems they can afford.
- **All** the satellite systems they can afford.
- **All** the wireless cable systems they can afford,
- **All** the cable TV networks they can afford.
- **All** the national TV broadcast networks (except the big four) they can afford.
- **All** the satellite television networks they can afford.
- **All** the movie studios they can afford
- **All** the television production studios they can afford
- **All** the television syndicated program companies they can afford
- **All** the internet programming production and distribution facilities they can afford.
- **All** the newspapers they can afford–limited only by the local television/newspaper cross-ownership rules.
- **All** the magazines they can afford.
- **All** the billboard companies they can afford

It is a stretch—to say the least—that the 35% national cap restricts the ability of the broadcast network to compete.

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I don't know what Thomas Jefferson would think about *Feur Factor* if he were alive today. Nor do I know if he would enjoy a Billy Graham crusade or a Presidential debate. But I think he would concur with me on one point—that the local television station in Charlottesville should reflect the values of its local viewers and not merely the national and international program interests of the major national television networks.

Thank you again for your consideration of our views,